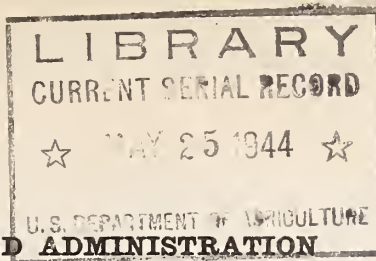


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WFO 77
REVOCATION
APR. 25, 1944

[WFO 77, Revocation]

PART 1405—FRUITS AND VEGETABLES

DRY ONIONS

War Food Order No. 77 (formerly designated as Food Distribution Order No. 77, as originally issued by the War Food Administrator on August 27, 1943, 8 F.R. 11889, and as amended, 8 F.R. 12775), is revoked as of 12:01 a. m., e. w. t., April 26, 1944.

With respect to violations, rights accrued, liabilities incurred, or appeals taken under War Food Order No. 77, prior to the effective time of this revocation, all provisions of said War Food Order No. 77, in effect prior to this revocation shall be deemed to be in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with re-

spect to any such violation, right or liability.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783)

Issued this 25th day of April 1944.

GROVER B. HILL,
*First Assistant War
Food Administrator.*

War Food Administration,
Summary to WFO-77.

War Food Order No. 77 was terminated by the War Food Administration at 12:01

a. m., EWT on April 26. The order was placed in effect last August 31 to control shipments of onions from 12 States under a shipping permit plan as a means of helping the armed forces and dehydra-

tors obtain their requirements for onions. States affected by WFO 77 were California, Washington, Oregon, Utah, Nevada, Idaho, Colorado, Minnesota, North Dakota, Michigan, Indiana, and New York.

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WAR FOOD ADMINISTRATION

[War Food Order 78]

PART 1599—PROCEDURAL REGULATIONS

ISSUANCE OF ORDERS AFFECTING PERSONS
SUBJECT TO PRIORITY OR ALLOCATION OR-
DERS AND REGULATIONS

In order to provide for the enforce-
ment of priority or allocation orders or
regulations administered by the War
Food Administration, it is hereby or-
dered as follows:

§ 1599.58 *Delegation of authority to
the Director of Marketing Services.* (a)
The Director of Marketing Services is
authorized: (1) To issue, under his name
and title, after affording persons affected
an opportunity to be heard, all orders
resulting from any violation of a priori-
ty or allocation order or regulation ad-
ministered by the Office of Marketing
Services (including, but not limited to,

those suspending, revoking, or withdraw-
ing, in any manner, any quota, license,
or authorization), and to exercise the
functions, duties, powers, authority, and
discretion conferred upon the War Food
Administrator in connection therewith;

(2) To prepare and issue, under his
name and title, for publication in the
FEDERAL REGISTER, procedural regulations
with respect to the matters specified in
subparagraph (1) hereof, and such other
matters related to the priority or allo-
cation orders or regulations administered
by the Office of Marketing Services as
may be necessary to effectuate the pow-
ers vested in him;

(3) To redelegate any and all of the
responsibilities, powers, authority, or dis-
cretion hereby conferred upon him to
such of the Deputy Directors of Market-
ing Services as he may deem appropriate.

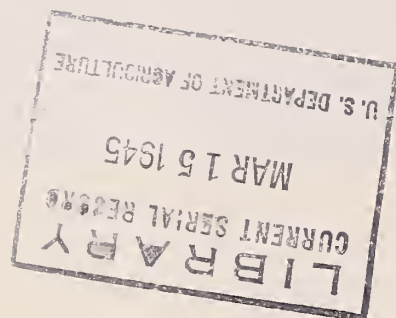
(b) War Food Order 78, as amended,
9 F.R. 4321, 4319, 6202, 9943 (formerly
known as Procedural Regulation 1, is-
sued December 4, 1943, 8 F.R. 16497 by
the Acting Director of Food Distribu-
tion) is hereby renumbered War Food
Order 78-1; and the amendments here-
tofore issued to War Food Order 78 (9
F.R. 6202, 9943) shall be amendments to
War Food Order 78-1.

(c) This order shall become effective
at 12:01 a. m., e. w. t. February 21, 1945.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8
F.R. 3897; E.O. 9334, 8 F.R. 5423; E.O.
9392, 8 F.R. 14783)

Issued this 20th day of February 1945.

ASHLEY SELLERS,
Assistant War Food Administrator.



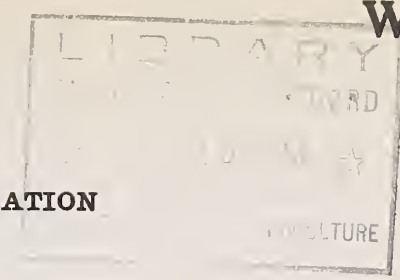
WAR FOOD ADMINISTRATION
Office of Distribution
Washington 25, D. C.

CORRECTION NOTICE - WFO 78, Amdt. 1

In Sec. 1599.5, paragraph (c) end of line 2, the word "not" has been omitted after "including, but,". The phrase in parenthesis should read "(including, but not limited to, an order suspending, revoking, or withdrawing, in any manner, any quota, license, or authorization)".

U. S. DEPARTMENT OF AGRICULTURE
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WAR FOOD ADMINISTRATION

[WFO 78, Amdt. 1]

PART 1599—PROCEDURAL REGULATIONS

ISSUANCE OF ORDERS RESULTING FROM VIOLATIONS OF PRIORITY OR ALLOCATION ORDERS

War Food Order No. 78, 9 F.R. 4321, 4319 (formerly known as Procedural Regulation 1, issued December 4, 1943, 8 F.R. 16497), is hereby amended to read as follows:

The following regulations are prescribed with respect to the issuance of orders necessitated by violations of priority or allocation orders or regulations administered by the Office of Distribution:

§ 1599.1 *Definitions.* When used in these regulations, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(a) The term "Director" means the Director of Distribution, War Food Administration.

(b) The term "compliance officer" means the official in charge of the field office of the Compliance Branch, Office of Distribution, War Food Administration, serving the area in which a respondent resides or does business.

(c) The term "respondent" means any person against whom a proceeding is instituted in accordance with these regulations.

(d) The term "person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

§ 1599.2 *Meaning of words.* Words in these regulations in the singular form shall be deemed to import the plural, and, vice versa, as the case may demand.

§ 1599.3 *Institution of proceeding.* A proceeding under these regulations shall be instituted by the service of a notice upon the respondent by the compliance officer. The notice shall include a statement of the factual basis for, and the purpose of the proceeding.

§ 1599.4 *Filing of answer and request for hearing.* The respondent may, within five days after service of the notice upon him, file a written answer with the compliance officer setting forth his position with respect to the matters contained in the notice and, if he so desires, the respondent may, as a part of his answer, request an opportunity to be heard. The answer need not be in any particular form. The failure of respondent to file an answer shall constitute a waiver of any objection to the taking of such action as is deemed warranted.

§ 1599.5 *When a request for a hearing is not filed.* When the respondent fails to file an answer, or files an answer but does not request an opportunity to be heard, the compliance officer shall, on the basis of the information before him, including that contained in the answer, if such be filed, proceed as follows:

(a) When, for any reason, the compliance officer determines that the issues should be resolved in favor of respondent, he shall issue and cause to be served upon respondent, an order dismissing the proceeding;

(b) When, in the opinion of the compliance officer, the facts disclose that the proceeding should be terminated by the issuance of a warning letter, he may dispose of the proceeding by serving a warning letter upon the respondent; or

(c) When the compliance officer determines that an order (including, but not limited to, an order suspending, revoking, or withdrawing, in any manner, any quota, license, or authorization) should be issued against the respondent, the compliance officer shall cause an order to be prepared for the signature of the Director and transmit the proposed order, together with the docket containing all of the papers in the proceeding, to the Director.

§ 1599.6 *When a request for hearing is filed.* When, in connection with his answer, a respondent files with the compliance officer a request for a hearing, a notice fixing the time and place of the hearing shall be served on the respondent as hereinafter prescribed in these regulations: *Provided,* That, if the compliance officer determines that the information contained in the answer should result in resolving the issues in favor of the respondent, or if, for any other appropriate reason, the compliance officer determines to settle the issues in favor of the respondent, the compliance officer may, without a hearing, issue and serve upon the respondent such order, including a warning letter, as the compliance officer deems advisable in finally disposing of the matter.

§ 1597.7 *Designation of presiding officer.* The hearing shall be conducted by a presiding officer designated, by the Solicitor or his representative, from among those persons authorized to hold hearings. No person who has any pecuniary interest in the outcome of the proceeding; who has participated in any investigation preceding the institution of the proceedings; or who is related to any of the parties to the proceeding shall be designated to serve as presiding officer. In case of the absence, illness, resignation, or death of the presiding officer who

has been assigned to a proceeding or, in case the Solicitor or his representative determines that, for other good cause, the presiding officer should not act, the powers and duties to be performed by him in connection with the proceeding may be assigned to any other person authorized to hold hearings.

§ 1599.8 *Powers of presiding officer.* In any proceeding assigned to him, the presiding officer shall have power to:

(a) Rule upon motions and requests (all motions shall be in writing except that those made during the hearing may be stated orally);

(b) Adjourn the hearing from time to time and change the place of hearing (this power includes the right, for good cause shown, to continue the hearing so as to give the respondent a chance to appear where he has failed to appear at the designated time and place of hearing);

(c) Administer oaths or affirmations and take affidavits;

(d) Admit or exclude evidence;

(e) Issue subpoenas requiring the attendance and testimony of witnesses and the production of books, papers, and other documentary evidence;

(f) Authorize, take, or order the taking of depositions;

(g) Hear oral arguments on facts or law;

(h) Consolidate hearings where he deems such consolidation appropriate;

(i) Issue notices of hearings; and

(j) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

§ 1599.9 *Notice of hearing.* The presiding officer, upon being designated, shall immediately prepare and have served upon the respondent a notice of hearing, requiring the respondent to appear before him at a designated time and place. The notice shall state that if the respondent does not appear as directed, his nonappearance shall be deemed a waiver of any objection to the taking of such action as is deemed warranted. The notice of hearing, fixing a date for a hearing, shall be issued within a reasonable time after the filing with the compliance officer of a request for hearing by the respondent.

§ 1599.10 *Prehearing conferences.* In any proceeding in which it appears that such procedure will expedite the proceeding, the presiding officer may, at any time, request the parties or their counsel to confer with him to consider: (a) the simplification of the issues, (b) the possibility of obtaining stipulations of fact

and agreements with respect to documents which may avoid unnecessary proof and examination of witnesses; and (c) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made but there shall be prepared and filed for the record a copy of any stipulations or agreements made as a result of the conference.

§ 1599.11 *Appearances.* Parties may appear at a hearing in person or by counsel.

§ 1599.12 *Contemptuous conduct.* Contemptuous conduct by any person at a hearing shall be ground for exclusion of the person from the hearing.

§ 1599.13 *Transcript or summary of evidence.* No written transcript of the hearing is required unless requested on behalf of the War Food Administration or the respondent. If the respondent requests a transcript, he must provide for the making thereof and for the payment of expenses therefor. Where a transcript is made, two legible copies thereof shall be furnished to the presiding officer without charge within such time after completion of the taking of testimony as he shall direct. No transcript shall be made or considered part of the record until approved and certified by the presiding officer. In the event that no stenographic transcript of the testimony is taken, the presiding officer shall provide for the taking of such notes at the time of the hearing as will enable him to make a written summary of the relevant evidence received at the hearing.

§ 1599.14 *Fees and mileage.* Witnesses who are subpoenaed and who appear in the proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons before whom depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpoenaed on behalf of the War Food Administration, shall be proved before the presiding officer and, as to witnesses subpoenaed on behalf of any other party, shall be presented to such party.

§ 1599.15 *Depositions.* Upon the application of a party to the proceeding, the presiding officer may, at any time, order the taking of testimony by deposition. Applications for such an order shall be in writing. The presiding officer's order for the taking of a deposition shall be served upon the parties and shall state: (a) The time and place of the examination; (b) the name of the officer before whom the examination is to be made; and (c) the name of the deponent. The deposition shall be taken before the presiding officer, or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before a person authorized by the War Food Administrator to administer oaths. The

deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope, and mail the same to the presiding officer, where the deposition is not taken before the presiding officer. A deposition ordered and taken in accordance with the provisions of this section may be placed in evidence by any of the parties to the proceeding if the presiding officer finds that the use thereof will expedite the proceeding.

§ 1599.16 *Defaults and admissions.* (a) The failure of a respondent to appear at a hearing shall be deemed a waiver by him of the right to an opportunity to be heard and of any objection by him to the taking of such action as is deemed warranted by the facts. On such failure of the respondent to appear, the presiding officer shall prepare a certification as to the non-appearance of the respondent for the record and forward it, together with the docket, to the compliance officer. The compliance officer may take such action as is prescribed by § 1599.5 of these regulations.

(b) Upon the admission at the hearing by the respondent of the facts alleged in the notice served upon him, the presiding officer shall prepare a formal statement of such admission for the record. The presiding officer may, in his discretion, permit the introduction of evidence with respect to mitigating circumstances and conditions which will tend to assist in the determination of the nature of the final action to be taken. The presiding officer shall then forward the docket containing the record of the proceeding to the compliance officer. The compliance officer may thereupon take such action as is prescribed by § 1599.25 of these regulations.

§ 1599.17 *Evidence.* The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, at the discretion of the presiding officer, be examined separately and apart from all other witnesses except those who are parties to the proceeding. The rules of evidence prevailing in courts of law and equity shall not be controlling. The test of admissibility shall be the reliability, relevancy, and probative force of the evidence offered. Remote hearsay and unreliable evidence, which would not be convincing to the ordinary man, should not be received. Likewise, purely cumulative evidence should be avoided whenever possible. The grounds of any objection to the admission or rejection of any evidence may be briefly stated. The transcript, if any, shall not include argument except as permitted by the presiding officer. The ruling of the presiding officer shall be a part of the transcript, if any. Evidence may be offered in written form

where the parties agree. The presiding officer shall mark all of the exhibits received in evidence. Whenever practicable, an exhibit should be submitted with three copies. The refusal of a witness at a hearing to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for striking out all testimony previously given by such witness as to all matters. If a party to a proceeding or a witness refuses to testify on the ground of his privilege against self-incrimination, he shall not be compelled to testify unless directed by the presiding officer, with the consent of the representative of the War Food Administration, to testify pursuant to Public Law 507, 77th Congress, approved March 27, 1942 (Second War Powers Act). Affidavits may be received at the discretion of the presiding officer if the evidence is otherwise admissible.

§ 1599.18 *Order of proceeding.* The presiding officer shall open the hearing with such statement of the purpose of the hearing and the procedure that will be followed as he may deem appropriate. A representative of the War Food Administration, if present, shall then proceed to introduce either through an investigator or otherwise such data and information as is deemed appropriate in explanation and clarification of the position of the War Food Administration. Thereafter the respondent shall present such data and information in support of his position as he or his counsel deems appropriate and the presiding officer deems relevant. This presentation by the person affected may be in narrative form or in response to questions and may be presented through the respondent or other persons familiar with the relevant facts. At the close of the hearing the presiding officer may allow a short period for the presentation of oral argument or for a summary of the facts disclosed at the hearing and if he deems it advisable may allow briefs to be filed within a period prescribed by him not to exceed five days. Where practicable, three copies of briefs shall be filed.

§ 1599.19 *Manner of service.* Service of all documents required by these regulations to be served shall be made by personal service or registered mail.

§ 1599.20 *Personal service.* Personal service shall be made upon an individual other than an infant by delivering a copy of the document to him personally or by leaving a copy thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by leaving a copy thereof with his agent or a responsible individual at his usual place of business, or by delivering a copy of such papers to an agent authorized by appointment or by law to receive service of process. Personal service shall be made upon an infant by serving such papers in the manner prescribed by the law of the State in which service is made for the service of summons or other like process upon any such person in an action brought in the courts of general jurisdiction of that State. Personal service shall be made upon a domestic or

foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name by delivering a copy of such papers to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to such person.

§ 1599.21 *Registered mail.* Documents shall be served by registered mail by causing to be registered and mailed a copy addressed to the individual, partnership, corporation, organization, or association, who is the respondent, at his or its last known residence, principal office, or place of business.

§ 1599.22 *Proof of service.* When service has been effected, the person making such service shall prepare the proof of service as follows: (a) In case of personal service, he shall execute a certificate showing the date, time, and place where service was effected, and the person upon whom service was effected, and the nature of the document served; and (b) in the case of service by registered mail, he shall execute a certificate showing the date, time, and place at which the document was mailed, and to whom addressed, and the nature of the document mailed, and shall attach thereto the registered mail receipt. The certificate in both cases shall disclose that the person was not a party to the proceeding and was over 18 years of age.

§ 1599.23 *When answer or request for hearing shall be deemed filed.* An answer or a request for hearing shall be deemed to have been filed on the date of mailing, as evidenced by the post mark at the place of mailing, or, if otherwise delivered to the office of the compliance officer, on the date of such delivery, as evidenced by the time it is marked "filed" in such office.

§ 1599.24 *Record.* (a) As soon as practicable after the close of the hearing, the presiding officer shall certify to

the compliance officer an original and, where practicable, one copy of the record of the proceeding which shall contain the following:

(1) The procedural documents, including the initiating notice, the notice of hearing, and the certifications of service;

(2) The evidence received at the hearing, either stenographically transcribed or summarized by the presiding officer, including exhibits, stipulations, or other documents which have been received by the presiding officer; and

(3) Briefs, if any, received by the presiding officer.

(b) Where a summary statement of the evidence is made by the presiding officer, he shall, at the time of transmitting the record to the compliance officer, also submit copies of the summary statement of the evidence to the parties to the proceeding or to their representatives.

§ 1599.25 *Action by compliance officer upon receipt of docket from presiding officer.* Upon receipt of the docket containing the record from the presiding officer, the compliance officer shall, on the basis of the information before him, proceed as follows:

(a) When the compliance officer determines that the proceeding should be dismissed, he may issue and serve upon the respondent such order, including a warning letter, as the compliance officer deems advisable in finally disposing of the matter.

(b) When the compliance officer does not decide to terminate the proceeding as described in § 1599.25 (a) of these regulations, he shall transmit the docket, together with his recommended order, to the Director for final action.

§ 1599.26 *Issuance and service of orders by the Director.* The Director, upon receipt of a docket containing all of the papers in the proceeding, may issue an order as recommended by the compliance officer or, where the Director does not follow the recommendation of the compliance officer, he may prepare

and issue such other order as may be required to effectuate the disposition of the proceeding in the manner determined by him. The final order of the Director shall be served upon the respondent.

§ 1599.27 *Reconsideration.* The respondent may, within five days after a final order of the Director is served on him, apply in writing to the Director for reconsideration. The filing of such an application shall not stay the operation of the order unless it is otherwise directed. Facts or arguments bearing on the merits of the policy embodied in the priority or allocation order or regulation violated will not be considered.

§ 1599.28 *Modification or revocation of orders.* The Director may, upon a determination that an order issued pursuant to these regulations tends to interfere with the maintenance of an adequate supply and efficient distribution of food to meet war and essential civilian needs, modify or revoke such order. This action may be taken upon his own initiative or upon application made by persons affected by the operation of the order.

§ 1599.29 *Delegation of authority to Deputy Director of Distribution.* Any Deputy Director of Distribution, designated from time to time by the Director, may exercise the functions, duties, powers, authority, and discretion of the Director as set forth in these regulations.

Effective date. This order shall become effective at 12:01 a. m., e. w. t., on June 5, 1944. Unless the Director shall otherwise order, all proceedings pending on the effective date hereof shall be concluded in accordance with this amendment.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783 and Delegation of Authority, 8 F.R. 13696)

Issued this 3d day of June 1944.

LEE MARSHALL,
Director of Distribution.

WAR FOOD ADMINISTRATION
OFFICE OF DISTRIBUTION
WASHINGTON 25, D. C.

OFFICIAL BUSINESS

Penalty for Private Use to Avoid Payment of
Postage, \$300

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WFO 78

AMDT. 2

AUG. 12, 1944

WAR FOOD ADMINISTRATION

[WFO 78, Amdt. 2]

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PART 1599—PROCEDURAL REGULATIONS

ISSUANCE OF ORDERS RESULTING FROM VIOLATIONS OF PRIORITY OR ALLOCATION ORDERS

War Food Order No. 78 (9 F.R. 4321, 4319, 6202) formerly known as Procedural Regulation 1, issued December 4, 1943 (8 F.R. 15497), is hereby further amended as follows:

1. By deleting § 1599.5 (c) therefrom

(c) When the Compliance Officer determines that an order (including, but not limited to, an order suspending, revoking, or withdrawing, in any manner, any quota, license, or authorization) should be issued against the respondent, the Compliance Office shall make a recommendation therefor to the Director, and transmit his recommendation, together with the docket containing all of the papers in the proceeding, to the Director.

2. By deleting from § 1599.25 (b) the

tuting therefor the word "recommendation."

This amendment shall become effective at 12:01 a. m., e. w. t., August 14, 1944.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783; and Delegation of Authority, 8 F.R. 13696)

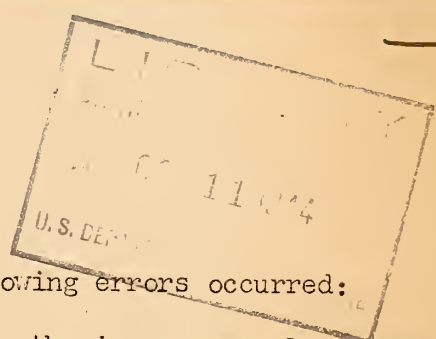
Issued this 12th day of August 1944.

C. W. KITCHEN,

733F

Reserve

WAR FOOD ADMINISTRATION
Office of Distribution
Washington 25, D. C.



CORRECTION NOTICE - WFO 78 Amendment 2.

In printing War Food Order No. 78 Amendment 2 the following errors occurred:

Introductory paragraph, line 4, the information in parenthesis erroneously appears (8 F R 15497). This should be corrected to read; (8 F R 16497)

Paragraph (c), line 7, the word "Office " should be "Officer" so the line will read "the Compliance Officer shall make a"...

WAR FOOD ADMINISTRATION
OFFICE OF DISTRIBUTION
WASHINGTON 25, D. C.

OFFICIAL BUSINESS

Penalty for Private Use to Avoid Payment of
Postage, \$300

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WFO 78

DEPARTMENT OF AGRICULTURE

AMDT. 2
OCT. 16, 1945

[WFO 78, Amdt. 2]

PART 1599—PROCEDURAL REGULATIONS

ISSUANCE OF ORDERS AFFECTING PERSONS
SUBJECT TO PRIORITY OR ALLOCATION OR-
DERS AND REGULATIONS

War Food Order No. 78, issued February 20, 1945 (10 F.R. 2155), as amended March 21, 1945 (10 F.R. 3077), and August 23, 1945 (10 F.R. 10419), is hereby further amended to read as follows:

In order to provide for the enforcement of priority or allocation orders or regulations administered by the Production and Marketing Administration, United States Department of Agriculture, it is hereby ordered as follows:

§ 1599.58 *Delegation of authority to Assistant Administrator.* (a) The As-

sistant Administrator in charge of Regulatory and Marketing Service work, Production and Marketing Administration, United States Department of Agriculture, is authorized: (1) To issue, under his name and title, after affording persons affected an opportunity to be heard, all orders resulting from any violation of a priority or allocation order or regulation administered by the Production and Marketing Administration, United States Department of Agriculture (including, but not limited to, those suspending, revoking, or withdrawing, in any manner, any quota, license, or authorization), and to exercise the functions, duties, powers, authority, and discretion conferred upon the Secretary of Agriculture in connection therewith, and (2) to prepare and

issue, under his name and title, for publication in the FEDERAL REGISTER, procedural regulations with respect to the matters specified in subparagraph (1) hereof, and such other matters related to the priority or allocation orders or regulations administered by the Production and Marketing Administration, United States Department of Agriculture, as may be necessary to effectuate the powers vested in him.

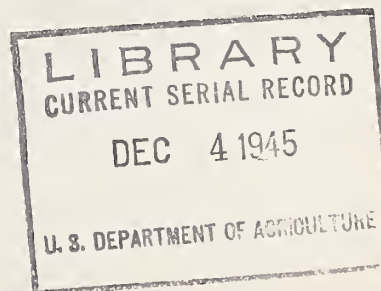
(b) This order shall become effective at 12:01 a. m., e. s. t., October 19, 1945.

(E.O. 9280, 7 F.R. 10179; E.O. 9577, 10 F.R. 8087)

Issued this 16th day of October 1945.

[SEAL]

J. B. HUTSON,
Acting Secretary of Agriculture.



GPO—WFA 593—p. 1

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cap. 5

WFO 78-1

AMDT. 3

MAR. 2, 1945

WAR FOOD ADMINISTRATION

[WFO 78-1, Amdt. 3]

PART 1599—PROCEDURAL REGULATIONS
ISSUANCE OF ORDERS RESULTING FROM VIOLATIONS OF PRIORITY OR ALLOCATION ORDERS

War Food Order No. 78-1, 9 F.R. 4321, 4319, 6202, 9945 (formerly known as Procedural Regulation 1, issued December 4, 1943, 8 F.R. 16497, and renumbered War Food Order 78-1, 10 F.R. 2155) is hereby further amended as follows:

1. By deleting the words "Office of Distribution" in the paragraph immediately preceding § 1599.1 and substituting therefor the words "Office of Marketing Services."

2. By deleting the words "Director of Distribution" in § 1599.1 (a) and substituting therefor the words "Director of Marketing Services."

3. By deleting the words "Office of Distribution" in § 1599.1 (b) thereof and substituting therefor the words "Office of Marketing Services."

4. By adding the following sentence to § 1599.26: "The order shall not become operative until five days after the service thereof, or if an application for a stay is made within such five day period, until the expiration of five days after service of an order denying the stay."

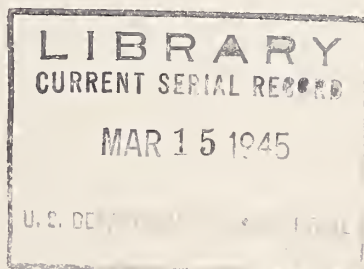
5. By deleting the words "Deputy Director of Distribution" wherever they appear in the title, or in the text of § 1599.29 and substituting therefor the words "Deputy Director of Marketing Services."

This amendment shall become effective at 12:01 a. m., e. w. t. March 3, 1945.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783; and WFO 78, 10 F.R. 2155)

Issued this 2d day of March 1945.

C. W. KITCHEN,
Director of Marketing Services.



GPO—WFA 336--p. 1

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F733F

DEPARTMENT OF AGRICULTURE

CURRENT SERIAL RECORD

DEC 3 1945

WFO 78-1

AMDT. 4

OCT. 17, 1945

[WFO 78-1, Amdt. 4]

PART 1599—PROCEDURAL REGULATIONS

ISSUANCE OF ORDERS RESULTING FROM VIOLATIONS OF PRIORITY OR ALLOCATION ORDERS

War Food Order No. 78-1. 10 F.R. 2155, 9 F.R. 6202, 9943, 10 F.R. 2495, 10419 (formerly designated Procedural Regulation 1, 8 F.R. 16497, and redesignated as War Food Order No. 78, 9 F.R. 4319, 4321), is further amended to read as follows:

The following regulations are prescribed with respect to the issuance of orders necessitated by violations of priority or allocation orders or regulations administered by the Production and Marketing Administration, United States Department of Agriculture:

§ 1599.1 *Definitions.* When used in these regulations, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(a) The term "Assistant Administrator" means the Assistant Administrator for Regulatory and Marketing Service work, Production and Marketing Administration, United States Department of Agriculture.

(b) The term "Compliance Officer" means the official in charge of the field office of the Compliance and Investigation Branch, Production and Marketing Administration, United States Department of Agriculture, serving the area in which a respondent resides or does business.

(c) The term "Respondent" means any person against whom a proceeding is instituted in accordance with these regulations.

(d) The term "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

§ 1599.2 *Meaning of words.* Words in these regulations in the singular form shall be deemed to import the plural, and, vice versa, as the case may demand.

§ 1599.3 *Institution of proceeding.* A proceeding under these regulations shall be instituted by the service of a notice upon the respondent by the compliance officer. The notice shall include a statement of the factual basis for, and the purpose of the proceeding.

§ 1599.4 *Filing of answer and request for hearing.* The respondent may, within five days after service of the notice upon him, file a written answer with the compliance officer setting forth his position with respect to the matters contained in the notice and, if he so desires, the respondent may, as a part of his answer, request an opportunity to be heard. The answer need not be in any particular form. The failure of respondent to file an answer shall constitute a waiver of any objection to the taking of such action as is deemed warranted.

§ 1599.5 *When a request for a hearing is not filed.* When the respondent fails

to file an answer, or files an answer but does not request an opportunity to be heard, the compliance officer shall, on the basis of the information before him, including that contained in the answer, if such be filed, proceed as follows:

(a) When, for any reason, the compliance officer determines that the issues should be resolved in favor of respondent, he shall issue and cause to be served upon respondent, an order dismissing the proceeding;

(b) When, in the opinion of the compliance officer, the facts disclose that the proceeding should be terminated by the issuance of a warning letter, he may dispose of the proceeding by serving a warning letter upon the respondent; or

(c) When the compliance officer determines that an order (including, but not limited to, an order suspending, revoking, or withdrawing, in any manner, any quota, license, or authorization) should be issued against the respondent, the compliance officer shall make a recommendation therefor to the Assistant Administrator and transmit his recommendation, together with the docket and all the papers in the proceeding, to the Assistant Administrator.

§ 1599.6 *When a request for hearing is filed.* When, in connection with his answer, a respondent files with the compliance officer a request for a hearing, a notice fixing the time and place of the hearing shall be served on the respondent as hereinafter prescribed in these regulations: *Provided*, That, if the compliance officer determines that the information contained in the answer should result in resolving the issues in favor of the respondent, or if, for any other appropriate reason, the compliance officer determines to settle the issues in favor of the respondent, the compliance officer may, without a hearing, issue and serve upon the respondent such order, including a warning letter, as the compliance officer deems advisable in finally disposing of the matter.

§ 1599.7 *Designation of presiding officer.* The hearing shall be conducted by a presiding officer designated, by the Solicitor or his representative, from among those persons authorized to hold hearings. No person who has any pecuniary interest in the outcome of the proceeding; who has participated in any investigation preceding the institution of the proceedings; or who is related to any of the parties to the proceeding shall be designated to serve as presiding officer. In case of the absence, illness, resignation, or death of the presiding officer who has been assigned to a proceeding or, in case the Solicitor or his representative determines that, for other good cause, the presiding officer should not act, the powers and duties to be performed by him in connection with the proceeding may be assigned to any other person authorized to hold hearings.

§ 1599.8 *Powers of presiding officer.* In any proceeding assigned to him, the presiding officer shall have power to:

(a) Rule upon motions and requests (all motions shall be in writing except that those made during the hearing may be stated orally);

(b) Adjourn the hearing from time to time and change the place of hearing (this power includes the right, for good cause shown, to continue the hearing so as to give the respondent a chance to appear where he has failed to appear at the designated time and place of hearing);

(c) Administer oaths or affirmations and take affidavits;

(d) Admit or exclude evidence;

(e) Issue subpoenas requiring the attendance and testimony of witnesses and the production of books, papers, and other documentary evidence;

(f) Authorize, take, or order the taking of depositions;

(g) Hear oral arguments on facts or law;

(h) Consolidate hearings where he deems such consolidation appropriate;

(i) Issue notices of hearings; and

(j) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

§ 1599.9 *Notice of hearing.* The presiding officer, upon being designated, shall immediately prepare and have served upon the respondent a notice of hearing, requiring the respondent to appear before him at a designated time and place. The notice shall state that if the respondent does not appear as directed, his nonappearance shall be deemed a waiver of any objection to the taking of such action as is deemed warranted. The notice of hearing, fixing a date for a hearing, shall be issued within a reasonable time after the filing with the compliance officer of a request for hearing by the respondent.

§ 1599.10 *Prehearing conferences.* In any proceeding in which it appears that such procedure will expedite the proceeding, the presiding officer may, at any time, request the parties or their counsel to confer with him to consider: (a) the simplification of the issues, (b) the possibility of obtaining stipulations of fact and agreements with respect to documents which may avoid unnecessary proof and examination of witnesses; and (c) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made but there shall be prepared and filed for the record a copy of any stipulations or agreements made as a result of the conference.

§ 1599.11 *Appearances.* Parties may appear at a hearing in person or by counsel.

§ 1599.12 *Contemptuous conduct.* Contemptuous conduct by any person at a hearing shall be ground for exclusion of the person from the hearing.

§ 1599.13 *Transcript or summary of evidence.* No written transcript of the hearing is required unless requested on behalf of the United States Department

of Agriculture or the respondent. If the respondent requests a transcript, he must provide for the making thereof and for the payment of expenses therefor. Where a transcript is made, two legible copies thereof shall be furnished to the presiding officer without charge within such time after completion of the taking of testimony as he shall direct. No transcript shall be made or considered part of the record until approved and certified by the presiding officer. In the event that no stenographic transcript of the testimony is taken, the presiding officer shall provide for the taking of such notes at the time of the hearing as will enable him to make a written summary of the relevant evidence received at the hearing.

§ 1599.14 *Fees and mileage.* Witnesses who are subpoenaed and who appear in the proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons before whom depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpoenaed on behalf of the United States Department of Agriculture, shall be proved before the presiding officer and, as to witnesses subpoenaed on behalf of any other party, shall be presented to such party.

§ 1599.15 *Depositions.* Upon the application of a party to the proceeding, the presiding officer may, at any time, order the taking of testimony by deposition. Applications for such an order shall be in writing. The presiding officer's order for the taking of a deposition shall be served upon the parties and shall state: (a) The time and place of the examination; (b) the name of the officer before whom the examination is to be made; and (c) the name of the deponent. The deposition shall be taken before the presiding officer, or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before a person authorized by the Secretary of Agriculture to administer oaths. The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope, and mail the same to the presiding officer, where the deposition is not taken before the presiding officer. A deposition ordered and taken in accordance with the provisions of this section may be placed in evidence by any of the parties to the proceeding if the presiding officer finds that the use thereof will expedite the proceeding.

§ 1599.16 *Defaults and admissions.* (a) The failure of a respondent to appear at a hearing shall be deemed a waiver by him of the right to an opportunity to be heard and of any objection by him to the taking of such action as is deemed warranted by the facts. On such failure of the respondent to appear, the presiding officer shall prepare a certification as to the non-appearance of the respondent for the record and forward it, together with the docket, to the compliance officer. The compliance officer may take such action as is prescribed by § 1599.5 of these regulations.

(b) Upon the admission at the hearing by the respondent of the facts alleged in the notice served upon him, the presiding officer shall prepare a formal statement of such admission for the record. The presiding officer may, in his discretion, permit the introduction of evidence with respect to mitigating circumstances and conditions which will tend to assist in the determination of the nature of the final action to be taken. The presiding officer shall then forward the docket containing the record of the proceeding to the compliance officer. The compliance officer may thereupon take such action as is prescribed by § 1599.25 of these regulations.

§ 1599.17 *Evidence.* The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, at the discretion of the presiding officer, be examined separately and apart from all other witnesses except those who are parties to the proceeding. The rules of evidence prevailing in courts of law and equity shall not be controlling. The test of admissibility shall be the reliability, relevancy, and probative force of the evidence offered. Remote hearsay and unreliable evidence, which would not be convincing to the ordinary man, should not be received. Likewise, purely cumulative evidence should be avoided whenever possible. The grounds of any objection to the admission or rejection of any evidence may be briefly stated. The transcript, if any, shall not include argument except as permitted by the presiding officer. The ruling of the presiding officer shall be a part of the transcript, if any. Evidence may be offered in written form where the parties agree. The presiding officer shall mark all of the exhibits received in evidence. Whenever practicable, an exhibit should be submitted with three copies. The refusal of a witness at a hearing to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for striking out all testimony previously given by such witness as to all matters. If a party to a proceeding or a witness refuses to testify on the ground of his privilege against self-incrimination, he shall not be compelled to testify unless directed by the presiding officer, with the consent of the representative of the United States Department of Agriculture, to testify pursuant to Public Law 507, 77th Congress, approved March 27, 1942 (Second War Powers Act), as amended and extended by Public Law 509, 78th Congress, approved December 20, 1944, 50 U.S.C.,

Supp. IV, § 633, et seq. Affidavits may be received at the discretion of the presiding officer if the evidence is otherwise admissible.

§ 1599.18 *Order of proceeding.* The presiding officer shall open the hearing with such statement of the purpose of the hearing and the procedure that will be followed as he may deem appropriate. A representative of the United States Department of Agriculture, if present, shall then proceed to introduce either through an investigator or otherwise such data and information as is deemed appropriate in explanation and clarification of the position of the United States Department of Agriculture. Thereafter the respondent shall present such data and information in support of his position as he or his counsel deems appropriate and the presiding officer deems relevant. This presentation by the person affected may be in narrative form or in response to questions and may be presented through the respondent or other persons familiar with the relevant facts. At the close of the hearing the presiding officer may allow a short period for the presentation of oral argument or for a summary of the facts disclosed at the hearing and if he deems it advisable may allow briefs to be filed within a period prescribed by him not to exceed five days. Where practicable, three copies of briefs shall be filed.

§ 1599.19 *Manner of service.* Service of all documents required by these regulations to be served shall be made by personal service or registered mail.

§ 1599.20 *Personal service.* Personal service shall be made upon an individual other than an infant by delivering a copy of the document to him personally or by leaving a copy thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by leaving a copy thereof with his agent or a responsible individual at his usual place of business, or by delivering a copy of such papers to an agent, authorized by appointment or by law to receive service of process. Personal service shall be made upon an infant by serving such papers in the manner prescribed by the law of the State in which service is made for the service of summons or other like process upon any such person in an action brought in the courts of general jurisdiction of that State. Personal service shall be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name by delivering a copy of such papers to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to such person.

§ 1599.21 *Registered mail.* Documents shall be served by registered mail by causing to be registered and mailed a copy addressed to the individual, partnership, corporation, organization, or association, who is the respondent, at his

or its last known residence, principal office, or place of business.

§ 1599.22 *Proof of service.* When service has been effected, the person making such service shall prepare the proof of service as follows: (a) In case of personal service, he shall execute a certificate showing the date, time, and place where service was effected, and the person upon whom service was effected, and the nature of the document served; and (b) in the case of service by registered mail, he shall execute a certificate showing the date, time, and place at which the document was mailed, and to whom addressed, and the nature of the document mailed, and shall attach thereto the registered mail receipt. The certificate in both cases shall disclose that the person was not a party to the proceeding and was over 18 years of age.

§ 1599.23 *When answer or request for hearing shall be deemed filed.* An answer or a request for hearing shall be deemed to have been filed on the date of mailing, as evidenced by the post mark at the place of mailing, or, if otherwise delivered to the office of the compliance officer, on the date of such delivery, as evidenced by the time it is marked "filed" in such office.

§ 1599.24 *Record.* (a) As soon as practicable after the close of the hearing, the presiding officer shall certify to the compliance officer an original and, where practicable, one copy of the record of the proceeding which shall contain the following:

(1) The procedural documents, including the initiating notice, the notice of hearing, and the certifications of service;

(2) The evidence received at the hearing, either stenographically transcribed or summarized by the presiding officer, including exhibits, stipulations, or other

documents which have been received by the presiding officer; and

(3) Briefs, if any, received by the presiding officer.

(b) Where a summary statement of the evidence is made by the presiding officer, he shall, at the time of transmitting the record to the compliance officer, also submit copies of the summary statement of the evidence to the parties to the proceeding or to their representatives.

§ 1599.25 *Action by compliance officer upon receipt of docket from presiding officer.* Upon receipt of the docket containing the record from the presiding officer, the compliance officer shall, on the basis of the information before him, proceed as follows:

(a) When the compliance officer determines that the proceeding should be dismissed, he may issue and serve upon the respondent such order, including a warning letter, as the compliance officer deems advisable in finally disposing of the matter.

(b) When the compliance officer does not decide to terminate the proceeding, as described in § 1599.25 (a) of these regulations, he shall transmit the docket, together with his recommendation, to the Assistant Administrator for final action.

§ 1599.26 *Issuance and service of orders by the Assistant Administrator.* The Assistant Administrator, upon receipt of a docket containing all of the papers in the proceeding, may issue an order as recommended by the compliance officer or, where the Assistant Administrator does not follow the recommendation of the compliance officer, he may prepare and issue such other order as may be required to effectuate the disposition of the proceeding in the manner

determined by him. The final order of the Assistant Administrator shall be served upon the respondent. The order shall not take effect until five days after the service thereof, or if an application for a stay is made within such five-day period, until the expiration of five days after the service of an order denying the stay.

§ 1599.27 *Reconsideration.* The respondent may, within five days after the final order of the Assistant Administrator is served on him, apply in writing to the Assistant Administrator for reconsideration. The filing of such an application shall not stay the effect of the order unless it is otherwise directed. Facts or arguments bearing on the merits of the policy embodied in the priority or allocation order or regulation violated will not be considered.

§ 1599.28 *Modification or revocation of orders.* The Assistant Administrator may, for good cause shown, modify or revoke any order issued pursuant to these regulations. This action may be taken upon his own initiative or upon application made by persons affected by the operation of the order.

Effective date. This order shall become effective at 12:01 a. m., e. s. t., on October 19, 1945. Unless the Assistant Administrator shall otherwise order, all proceedings pending on the effective date hereof shall be concluded in accordance with this amendment.

(E.O. 9280, 7 F.R. 10179; E.O. 9577, 10 F.R. 8087; WFO 78, Amendment 2)

Issued this 17th day of October 1945.

[SEAL]

C. W. KITCHEN,
Assistant Administrator for
Regulatory and Marketing
Service Work, Production and
Marketing Administration.

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DEPARTMENT OF AGRICULTURE

WFO 78-1

AMDT. 5
JUNE 5, 1946

[WFO 78-1, Amdt. 5]

PART 1599—PROCEDURAL REGULATIONS

ISSUANCE OF ORDERS RESULTING FROM VIOLATIONS OF PRIORITY OR ALLOCATION ORDERS

War Food Order No. 78-1, as amended, 10 F.R. 13042, is further amended to read as follows:

The following regulations are prescribed with respect to the issuance of orders necessitated by violations of priority or allocation orders or regulations administered by the Production and Marketing Administration, United States Department of Agriculture:

§ 1599.1 *Definitions.* When used in these regulations, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(a) The term "Administrator" means the Administrator, Production and Marketing Administration, United States Department of Agriculture, or any employee of the United States Department of Agriculture to whom the Administrator has delegated any or all of the authority to be exercised by him under these regulations.

(b) The term "regional attorney" means the regional attorney of the Office of the Solicitor, United States Department of Agriculture, for the region where the violations occurs or any attorney employed in the Office of the Solicitor and designated by the regional attorney to act for him.

(c) The term "respondent" means any person against whom a proceeding is instituted pursuant to these regulations.

(d) The term "person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

§ 1599.2 *Meaning of words.* Words in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1599.3 *Institution of proceeding.* A proceeding under these regulations shall be instituted by the service of a notice upon the respondent by the regional attorney. The notice shall include a statement of the factual basis for, and the purpose of, the proceeding.

§ 1599.4 *Filing of answer and request for hearing.* The respondent may, within five days after service of the notice upon him, file a written answer with the regional attorney setting forth his position with respect to the matters contained in the notice and, if he so desires, the respondent may, as a part of his answer, request an opportunity to be heard. The answer need not be in any particular form. The failure of respondent to file an answer shall constitute a waiver of any objection to the taking of such action as is deemed warranted.

§ 1599.5 *When a request for a hearing is not filed.* When the respondent fails to file an answer, or files an answer but does not request an opportunity to be heard, the regional attorney shall, on the basis of the information before him, including that contained in the answer, if such be filed, proceed as follows:

(a) When, for any reason, the regional attorney determines that the issues should be resolved in favor of respondent, he shall issue and cause to be served upon respondent, an order dismissing the proceeding;

(b) When, in the opinion of the regional attorney, the facts disclose that the proceeding should be terminated by the issuance of a warning letter, he may terminate the proceeding by serving a warning letter upon the respondent; or

(c) When the regional attorney determines that an order (including, but not limited to, an order suspending, revoking, or withdrawing, in any manner, any quota, license, subsidy, or authorization) should be issued against the respondent, the regional attorney shall make a recommendation therefor to the Administrator and transmit his recommendation, together with the docket and all the papers in the proceeding, to the Administrator.

§ 1599.6 *When a request for hearing is filed.* When, in connection with his answer, a respondent files with the regional attorney a request for a hearing, a notice fixing the time and place of the hearing shall be served on the respondent as hereinafter prescribed in these regulations: *Provided*, That, if the regional attorney determines that the information contained in the answer should result in resolving the issues in favor of the respondent, or if, for any other appropriate reason, the regional attorney determines the issues should be resolved in favor of the respondent, the regional attorney may, without a hearing, issue and serve upon the respondent such warning letter or order as the regional attorney deems advisable in finally disposing of the matter.

§ 1599.7 *Designation of presiding officer.* The hearing shall be conducted by a presiding officer designated, by the Solicitor or his representative, from among those persons authorized to hold hearings. No person who has any pecuniary interest in the outcome of the proceeding, who has participated in any investigation preceding the institution of the proceedings, or who is related to any of the parties to the proceeding, shall be designated to serve as presiding officer. In case of the absence, illness, resignation, or death of the presiding officer who has been assigned to a proceeding or in case the Solicitor or his representative determines that, for other good cause, the presiding officer should not act, the powers and duties to be performed by him in connection with the proceeding may be assigned to any other person authorized to hold hearings.

§ 1599.8 *Powers of presiding officer.* In any proceeding assigned to him, the presiding officer shall have power to:

(a) Rule upon motions and requests (all motions shall be in writing except that those made during the hearing may be stated orally);

(b) Adjourn the hearing from time to time and change the place of hearing (this power includes the right, for good cause shown, to continue the hearing so as to give the respondent an opportunity to appear where he has failed to appear at the designated time and place of hearing);

(c) Administer oaths or affirmations and take affidavits;

(d) Admit or exclude evidence;

(e) Issue subpoenas requiring the attendance and testimony of witnesses and the production of books, papers, and other documentary evidence;

(f) Authorize, take, or order the taking of depositions;

(g) Hear oral arguments on facts or law;

(h) Consolidate hearings where he deems such consolidation appropriate;

(i) Issue notices of hearings; and

(j) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

§ 1599.9 *Notice of hearing.* Upon the receipt of a request for hearing, a presiding officer shall be designated as soon as practicable. The presiding officer, as soon as practicable, shall prepare and cause to be served upon the respondent a notice of hearing which shall fix a time and place for the hearing, require the respondent to appear before him at such time and place, and state that if the respondent does not appear as directed, such nonappearance shall be deemed a waiver of any objection to the taking of such action as is deemed warranted.

§ 1599.10 *Prehearing conferences.* In any proceeding in which it appears that such procedure will expedite the proceeding, the presiding officer may, at any time, request the parties or their counsel to confer with him to consider: (a) the simplification of the issues; (b) the possibility of obtaining stipulations of fact and agreements with respect to documents which may avoid the submission of documentary evidence and examination of witnesses; and (c) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but there shall be prepared and filed for the record a copy of any stipulations or agreements made as a result of the conference.

§ 1599.11 *Appearances.* Parties may appear at a hearing in person or by counsel.

§ 1599.12 *Contemptuous conduct.* Contemptuous conduct by any person at a hearing shall be ground for exclusion of the person from the hearing.

§ 1599.13 Transcript of evidence. Written transcript of the hearing is required. If the respondent desires a copy of the transcript, he must make seasonable request therefor and pay the regular charges therefor. Two legible copies of the transcript shall be furnished to the presiding officer within such time after completion of the taking of testimony as he shall direct. No transcript shall be made or considered part of the record until approved and certified by the presiding officer.

§ 1599.14 Fees and mileage. Witnesses who are subpoenaed and who appear in the proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Persons before whom depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. The fees and mileage of witnesses shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpoenaed on behalf of the United States Department of Agriculture, shall be proved before the presiding officer and, as to witnesses subpoenaed on behalf of any other party, shall be presented to such party.

§ 1599.15 Depositions. Upon the application of a party to the proceeding, the presiding officer may, at any time, order the taking of testimony by deposition. Applications for such an order shall be in writing. The presiding officer's order for the taking of a deposition shall be served upon the parties and shall state: (a) the time and place of the examination; (b) the name of the officer before whom the examination is to be made; and (c) the name of the deponent. The deposition shall be taken before the presiding officer, or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before a person authorized by the Secretary of Agriculture to administer oaths. The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same to the presiding officer when the deposition is not taken before the presiding officer. A deposition ordered and taken in accordance with the provisions of this section may be placed in evidence by any of the parties to the proceeding if the presiding officer finds that the contents thereof are otherwise admissible as evidence in the proceeding.

§ 1599.16 Defaults and admissions. (a) The failure of a respondent to appear at a hearing shall be deemed a waiver by him of the right to an opportunity

to be heard and of any objection by him to the taking of such action as is deemed warranted by the facts. On such failure of the respondent to appear, the presiding officer shall prepare a certification of the nonappearance of the respondent for the record and may take such action as the regional attorney is allowed to take by § 1599.5 of these regulations.

(b) Upon the admission at the hearing by the respondent of the facts alleged in the notice served upon him, the presiding officer shall prepare a formal statement of such admission for the record. The presiding officer may, in his discretion, permit the introduction of evidence with respect to mitigating circumstances and conditions which will tend to assist in the determination of the nature of the final action to be taken. The presiding officer shall make a recommendation concerning the final action to be taken and forward the docket containing the record of the proceeding and his recommendation to the Administrator. The Administrator may thereupon take such action as is prescribed by § 1599.24 of these regulations.

§ 1599.17 Evidence. The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, at the discretion of the presiding officer, be examined separately and apart from all other witnesses except those who are parties to the proceeding. The rules of evidence prevailing in courts of law and equity shall not be controlling. The test of admissibility shall be the reliability, relevancy, and probative force of the evidence offered. The grounds of any objection to the admission or rejection of any evidence may be briefly stated. The transcript shall not include argument except as permitted by the presiding officer. The ruling of the presiding officer shall be a part of the transcript. The presiding officer shall mark all of the exhibits received in evidence. Whenever practicable, an exhibit should be submitted with three copies. The refusal of a witness at a hearing to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for striking out all testimony previously given by such witness as to all matters. Affidavits may be received at the discretion of the presiding officer if the evidence is otherwise admissible.

§ 1599.18 Manner of service. Service of all documents required by these regulations to be served shall be made by personal service or registered mail.

§ 1599.19 Personal service. Personal service shall be made upon an individual other than an infant by delivering a copy of the document to him personally or by leaving a copy thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by leaving a copy thereof with his agent or a responsible individual at his usual place of business, or by delivering a copy of such paper to an agent authorized by appointment or by law to receive service of process. Personal service shall

be made upon an infant by serving such papers in the manner prescribed by the law of the State in which service is made for the service of summons or other like process upon any such person in an action brought in the courts of general jurisdiction of that State. Personal service shall be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name by delivering a copy of such papers to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to such person.

§ 1599.20 Registered mail. Documents shall be served by registered mail by causing to be registered and mailed a copy addressed to the individual, partnership, corporation, organization, or association, who is the respondent, at his, or its, last-known residence, principal office, or place of business.

§ 1599.21 Proof of service. When service has been effected, the person making such service shall prepare the proof of service as follows: (a) In case of personal service, he shall execute a certificate showing the date, time, and place where service was effected, and the person upon whom service was effected, and the nature of the document served; and (b) in the case of service by registered mail, he shall execute a certificate showing the date and time of mailing, the place to which the document was mailed, the person to whom it was addressed, and the nature of the document mailed, and shall attach thereto the registered mail receipt. The certificate in both cases shall disclose that the person making such service was not a party to the proceeding and was over 18 years of age.

§ 1599.22 When answer or request for hearing shall be deemed filed. An answer or a request for hearing shall be deemed to have been filed on the date of mailing, as evidenced by the post mark at the place of mailing, or, if otherwise delivered to the office of the regional attorney, on the date of such delivery, as evidenced by the time it is marked "filed" in such office.

§ 1599.23 Record. (a) As soon as practicable after the close of the hearing, the presiding officer shall certify to the Administrator an original and one copy of the record of the proceeding which shall contain the following:

(1) The procedural documents, including the initiating notice, the notice of hearing, and the certifications of service;

(2) A transcript of the evidence received at the hearing, or other documents which have been received by the presiding officer;

(3) Briefs, if any, received by the presiding officer; and

(4) The presiding officer's recommendation.

§ 1599.24 *Issuance and service of orders by the Administrator.* The Administrator, upon receipt of a docket containing all of the papers in the proceeding, may prepare and issue such order as may be required to effectuate the disposition of the proceeding in the manner determined by him. The final order of the Administrator shall be served upon the respondent. The order shall not take effect until five days after the service thereof, or if an application for a stay is made within such five-day period, until the expiration of five days after the service of an order denying the stay.

§ 1599.25 *Reconsideration.* The respondent may, within five days after the final order of the Administrator is served

on him, apply in writing to the Administrator for reconsideration. The filing of such an application shall not stay the effect of the order unless it is otherwise directed. Facts or arguments bearing on the merits of the policy embodied in the priority or allocation order or regulation violated will not be considered.

§ 1599.26 *Modification or revocation of orders.* The Administrator may, for good cause shown, modify or revoke any order issued pursuant to these regulations. This action may be taken upon his own initiative or upon application made by persons affected by the operation of these regulations.

§ 1599.27 *Conduct of pending proceedings.* Unless the Administrator

shall otherwise order, all proceedings initiated under War Food Order 78-1 prior to this amendment and pending on the effective date hereof, shall be conducted and concluded in accordance with the provisions applicable at the time the proceedings were instituted.

Effective date. This order shall become effective at 12:01 a. m., e. s. t., on June 7, 1946.

(E.O. 9280, 7 F.R. 10179; E.O. 9577, 10 F.R. 8087; WFO 78, Amendment 2, 10 F.R. 13041; 11 F.R. 5105)

Issued this 5th day of June 1946.

[SEAL] ROBERT H. SHIELDS,
Administrator, Production and
Marketing Administration.

WAR FOOD ADMINISTRATION

[WFO 78-2]

PART 1599—PROCEDURAL REGULATION

ISSUANCE BY DIRECTOR OF SUPPLY OF ORDERS
RESULTING FROM VIOLATIONS OF PRIORITY
OR ALLOCATION ORDERS

The following regulations are prescribed with respect to the issuance of orders necessitated by violations of priority or allocation orders or regulations administered by the Office of Supply:

§ 1599.71 *Definitions.* When used in these regulations, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(a) The term "Director" means the Director of Supply, War Food Administration.

(b) The term "respondent" means any person against whom a proceeding is instituted in accordance with this order.

(c) The term "person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

§ 1599.72 *Meaning of words.* Words in this order in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1599.73 *Institution of proceedings.* The Director, or such officer or employee in the Office of Supply, as he may designate for that purpose, may, when there is reason to believe that any person has violated or is violating the provisions of any priority or any allocation order or regulation or amendment thereto, administered by the Office of Supply request the Solicitor or his representative to issue in the name of the Director a notice in writing to be served on the respondent as hereinafter prescribed. The notice shall include a statement of the factual basis for and the purpose of the proceedings.

§ 1599.74 *Filing of answer and request for hearing.* The respondent may, within five days after service of the notice upon him, file a written answer to the charges contained in such notice, at such place or places and with such person or persons as shall be designated in the notice. If he so desires the respondent may, as a part of his answer, request an opportunity to be heard. The answer need not be in any particular form. The failure of respondent to file an answer shall constitute a waiver of any objection to the taking of such action as is deemed warranted.

§ 1599.75 *When a request for a hearing is not filed.* When the respondent fails to file an answer, or files an answer but does not request an opportunity to be heard, the Director may, on the basis of the information before him, including that contained in the answer, if such be filed, take such of the following actions as he deems appropriate:

(a) Issue and cause to be served upon the respondent, an order dismissing the proceedings;

(b) Issue and serve a warning letter upon the respondent;

(c) Issue and cause to be served upon the respondent an order (including but not limited to an order suspending, revoking, or withdrawing in any manner any quota, license, or authorization).

§ 1599.76 *When a request for a hearing is filed.* When, in connection with his answer, the respondent files a request for a hearing, a notice fixing the time and place of the hearing shall be served upon the respondent as hereinafter prescribed: *Provided*, That if it appears from the answer that the proceeding should be dismissed, the Director may issue and cause to be served upon the respondent an order of dismissal, and if he should deem it advisable, a warning letter.

§ 1599.77 *Designation of presiding officer.* The hearing shall be conducted by a presiding officer designated, by the Solicitor or his representative, from among those persons authorized to hold hearings. No person who has any pecuniary interest in the outcome of the proceeding; who has participated in any investigation preceding the institution of the proceedings; or who is related to any of the parties to the proceeding shall be designated to serve as presiding officer. In case of the absence, illness, resignation, or death of the presiding officer who has been assigned to a proceeding or, in case the Solicitor or his representative determines that, for other good cause, the presiding officer should not act, the powers and duties to be performed by him in connection with the proceeding may be assigned to any other person authorized to hold hearings.

§ 1599.78 *Powers of presiding officer.* In any proceeding assigned to him, the presiding officer shall have power to:

(a) Rule upon motions and requests (all motions shall be in writing except that those made during the hearing may be stated orally);

(b) Adjourn the hearing from time to time and change the place of hearing. (this power includes the right, for good cause shown, to continue the hearings so as to give the respondent a chance to appear where he has failed to appear at the designated time and place of hearing);

(c) Administer oaths or affirmations and take affidavits;

(d) Admit or exclude evidence;

(e) Issue subpoenas requiring the attendance and testimony of witnesses and the production of books, papers, and other documentary evidence;

(f) Authorize, take, or order the taking of depositions;

(g) Hear oral arguments on facts or law;

(h) Consolidate hearings where he deems such consolidation appropriate;

(i) Issue notices of hearings; and

(j) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

§ 1599.79 *Notice of hearing.* The presiding officer, upon being designated, shall immediately prepare and have served upon the respondent a notice of hearing, requiring the respondent to appear before him at a designated time and place. The notice shall state that if the respondent does not appear as directed, his nonappearance shall be deemed a waiver of any objection to the taking of such action as is deemed warranted.

§ 1599.80 *Prehearing conferences.* In any proceeding in which it appears that such procedure will expedite the proceeding, the presiding officer may, at any time, request the parties or their counsel to confer with him to consider: (a) the simplification of the issues, (b) the possibility of obtaining stipulations of fact and agreements with respect to documents which may avoid unnecessary proof and examination of witnesses; and (c) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made but there shall be prepared and filed for the record a copy of any stipulations or agreements made as a result of the conference.

§ 1599.81 *Appearances.* Parties may appear at a hearing in person or by counsel.

§ 1599.82 *Contemptuous conduct.* Contemptuous conduct by any person at a hearing shall be ground for exclusion of the person from the hearing.

§ 1599.83 *Transcript or summary of evidence.* No written transcript of the hearing is required unless requested on behalf of the War Food Administration or the respondent. If the respondent requests a transcript, he must provide for the making thereof and for the payment of expenses therefor. Where a transcript is made, two legible copies thereof shall be furnished to the presiding officer without charge within such time after completion of the taking of testimony as he shall direct. No transcript shall be made or considered part of the record until approved and certified by the presiding officer. In the event that no stenographic transcript of the testimony is taken, the presiding officer shall provide for the taking of such notes at the time of the hearing as will enable him to make a written summary of the relevant evidence received at the hearing.

§ 1599.84 *Fees and mileage.* Witnesses who are subpoenaed and who appear in the proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons before whom depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpoenaed on behalf of the War Food Ad-

ministration, shall be proved before the presiding officer, and, as to witnesses subpoenaed on behalf of any other party, shall be presented to such party.

§ 1599.85 *Depositions.* Upon the application of a party to the proceeding, the presiding officer may, at any time, order the taking of testimony by deposition. Applications for such an order shall be in writing. The presiding officer's order for the taking of a deposition shall be served upon the parties and shall state: (a) The time and place of the examination; (b) the name of the officer before whom the examination is to be made; and (c) the name of the deponent. The deposition shall be taken before the presiding officer or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before a person authorized by the War Food Administrator to administer oaths. The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope, and mail the same to the presiding officer, where the deposition is not taken before the presiding officer. A deposition ordered and taken in accordance with the provisions of this section may be placed in evidence by any of the parties to the proceeding if the presiding officer finds that the use thereof will expedite the proceeding.

§ 1599.86 *Defaults and admissions.* (a) The failure of a respondent to appear at a hearing shall be deemed a waiver by him of the right to an opportunity to be heard and of any objection by him to the taking of such action as is deemed warranted by the facts. On such failure of the respondent to appear, the presiding officer shall prepare a certification as to the non-appearance of the respondent for the record and forward it, together with the docket, to the Director. The Director may take such action as is prescribed by § 1599.75 of these regulations.

(b) Upon the admission at the hearing by the respondent of the facts alleged in the notice served upon him, the presiding officer shall prepare a formal statement of such admission for the record. The presiding officer may, in his discretion, permit the introduction of evidence with respect to mitigating circumstances and conditions which will tend to assist in the determination of the nature of the final action to be taken. The presiding officer shall then forward the docket containing the record of the proceeding to the Director. The Director may thereupon take such action as is prescribed by § 1599.95 of these regulations.

§ 1599.87 *Evidence.* The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-ex-

amination. Any witness may, at the discretion of the presiding officer, be examined separately and apart from all other witnesses except those who are parties to the proceeding. The rules of evidence prevailing in courts of law and equity shall not be controlling. The test of admissibility shall be the reliability, relevancy, and probative force of the evidence offered. Remote hearsay and unreliable evidence, which would not be convincing to the ordinary man, should not be received. Likewise, purely cumulative evidence should be avoided whenever possible. The grounds of any objection to the admission or rejection of any evidence may be briefly stated. The transcript, if any, shall not include argument except as permitted by the presiding officer. The ruling of the presiding officer shall be a part of the transcript, if any. Evidence may be offered in written form where the parties agree. The presiding officer shall mark all of the exhibits received in evidence. Whenever practicable, an exhibit should be submitted with three copies. The refusal of a witness at a hearing to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for striking out all testimony previously given by such witness as to all matters. If a party to a proceeding or a witness refuses to testify on the ground of his privilege against self-incrimination, he shall not be compelled to testify unless directed by the presiding officer, with the consent of the representative of the War Food Administration, to testify pursuant to Public Law 507, 77th Congress, approved March 27, 1942 (Second War Powers Act). Affidavits may be received at the discretion of the presiding officer if the evidence is otherwise admissible.

§ 1599.88 *Order of proceeding.* The presiding officer shall open the hearing with such statement of the purpose of the hearing and the procedure that will be followed as he may deem appropriate. A representative of the War Food Administration, if present, shall then proceed to introduce either through an investigator or otherwise such data and information as is deemed appropriate in explanation and clarification of the position of the War Food Administration. Thereafter the respondent shall present such data and information in support of his position as he or his counsel deems appropriate and the presiding officer deems relevant. This presentation by the person affected may be in narrative form or in response to questions and may be presented through the respondent or other persons familiar with the relevant facts. At the close of the hearing the presiding officer shall allow a short period for the presentation of oral argument or for a summary of the facts disclosed at the hearing and shall allow briefs to be filed within a period prescribed by him not to exceed five days. Where practicable, three copies of briefs shall be filed.

§ 1599.89 *Manner of service.* Service of all documents required by these regulations to be served shall be made by personal service or registered mail.

§ 1599.90 *Personal service.* Personal service shall be made upon an individual other than an infant by delivering a copy of the document to him personally or by leaving a copy thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by leaving a copy thereof with his agent or a responsible individual at his usual place of business, or by delivering a copy of such papers to an agent authorized by appointment or by law to receive service of process. Personal service shall be made upon an infant by serving such papers in the manner prescribed by the law of the State in which service is made for the service of summons or other like process upon any such person in an action brought in the courts of general jurisdiction of that State. Personal service shall be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name by delivering a copy of such papers to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to such person.

§ 1599.91 *Registered mail.* Documents shall be served by registered mail by causing to be registered and mailed a copy addressed to the individual, partnership, corporation, organization, or association, who is the respondent, at his or its last known residence, principal office, or place of business.

§ 1599.92 *Proof of service.* When service has been effected, the person making such service shall prepare the proof of service as follows: (a) In case of personal service, he shall execute a certificate showing the date, time, and place where service was effected, and the person upon whom service was effected, and the nature of the document served; and (b) in the case of service by registered mail, he shall execute a certificate showing the date, time, and place at which the document was mailed, and to whom addressed, and the nature of the document mailed, and shall attach thereto the registered mail receipt. The certificate in both cases shall disclose that the person was not a party to the proceeding and was over 18 years of age.

§ 1599.93 *When answer or request for hearing shall be deemed filed.* An answer or a request for hearing shall be deemed to have been filed on the date of mailing, as evidenced by the postmark at the place of mailing, or, if otherwise delivered to the place and person designated in the notice, on the date of such delivery, as evidenced by the time it is marked "filed," in such office.

§ 1599.94 *Record.* (a) As soon as practicable after the closing of the hearing the presiding officer shall certify to the Director an original, and where practicable, one copy of the record of the proceeding which shall contain the following:

(1) The procedural documents, including the initiating notice, the notice

of hearing, and the certifications of service;

(2) The evidence received at the hearing, closing arguments or summations, if any, either stenographically transcribed, or summarized by the presiding officer, including exhibits, stipulations, or other documents which have been received by the presiding officer; and

(3) Briefs, if any, received by the presiding officer.

(b) Where a summary statement of the evidence and closing arguments is made by the presiding officer, he shall, at the time of transmitting the record to the Director, also submit copies of the summary statement of the evidence to the parties to the proceeding or to their representatives.

§ 1599.95 *Action upon receipt of docket and report from presiding officer.* Upon receipt of the docket containing the record from the presiding officer, and the presiding officer's report, the Director shall upon the basis of the information before him proceed as follows:

(a) When he determines that the proceeding should be dismissed he shall issue

and cause to be served upon the respondent such order of dismissal, including a warning letter if he deems it advisable in finally disposing of the matter.

(b) Issue and cause to be served such other order, including but not limited to an order suspending, revoking, or withdrawing, in any manner any quota, license, or authorization, as he shall determine. Such order shall not become operative until five days after service thereof, or if an application for a stay is made to the Director within such five day period, until the expiration of five days after service of an order denying the stay.

§ 1599.96 *Order on consent.* Upon the written consent of the respondent the Director may at any time issue an order suspending, revoking, or withdrawing any license or authorization or quota of the respondent. If such consent is given during the course of proceedings hereunder, it shall be forwarded to the Director by the presiding officer. If such consent is given before the institution of formal proceedings hereunder such a proposed consent order shall be submitted to the Director by the Solicitor or his representative.

§ 1599.97 *Modification or revocation of orders.* The Director may, upon a determination that an order issued pursuant to these regulations tends to interfere with the maintenance of an adequate supply and efficient distribution of food to meet war and essential civilian needs, modify or revoke such order. This action may be taken upon his own initiative or upon application made by persons affected by the operation of the order.

§ 1599.98 *Delegation of authority to Deputy Director of Supply.* Any Deputy Director of Supply, designated by the Director may exercise the functions, duties, powers, authority, and discretion of the Director, as set forth in this order.

Effective date. This order shall become effective at 12:01 a. m., e. w. t. on May 15, 1945.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783; WFO 78, 10 F.R. 2155, 3077)

Issued this 14th day of May 1945.

R. W. MAYCOCK,
Director of Supply.

